IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8699 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASUDEV TRADING COMPANY

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

MS BR GAJJAR, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of Order: 24/04/2001

ORAL ORDER

Rule. Ms. BR Gajjar appears and waives service of rule on behalf of the respondent.

2. By means of this petition, the petitioner has sought for quashing and setting aside the impugned order dated 29-7-2000 passed by the Licensing Authority and

District Supply Officer, Junagadh and for restraining the respondents from further implementing and executing the aforesaid impugned order.

3. Wholesale Licence No.25 and Retail Licence No.54 were issued by the licensing authority in the name of the petitioner's partnership firm. It is stated in the counter affidavit that Shri Maganlal Odhavji was partner of that firm at the relevant time when the licence was issued. Shri Hiten D. Kanabar moved an application before the concerned licensing authority to insert his name as partner of the partnership firm and that application was allowed and the said Shri Hiten D. Kanabar was permitted to be a partner of the petitioner partnership firm by the order dated 15-6-1989. Another application dated 11-12-1989 was moved before the licensing authority to delete the name of of Shri Maganlal Odhavji as a partner of the petitioner partnership firm as he did not want to continue as a partner and he was not interested in the business of the firm and he should be permitted to retire as a partner of the firm. Accordingly, the licensing authority deleted the name of said Shri Maganlal Odhavji by the order dated 14-3-1990 permitting Shri Maganlal Odhavji as the partner of the petitioner firm. On 11-11-1992 another application was moved before the licencing authority to include the names of two partners in the said firm and the licensing authority recommended the State Government for inserting the names of two partners in the petitioner- firm. The State Government found that the licence issued under the provisions of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 (hereinafter referred to as the Control Order, 1981) was not transferable. Therefore, the State Government directed the licensing authority to cancel the licence after giving reasonable opportunity of representing the case to the person concerned. The licensing authority issued notice to Maganlal Odhavji who was the proprietor of the petitioner firm at the initial stage. But said Maganlal Odhavji was not interested in the business of the firm and hence the licensing authority passed the order cancelling the licence of the firm by the impugned order and that order has been challenged in the present petition.

4. Learned counsel for the petitioner submitted that for suspension and cancellation of the licence the relevant provisions are mentioned in Clause - 8 of the Control Order, 1981. The partnership of the petitioner firm have not been given any opportunity of hearing. Clause - 8 of Control Order 1981, requires that no order

shall be passed by the licensing authority. Under this clause, unless and until the licence holder has been given reasonable opportunity of stating his case to that authority against the proposed cancellation or suspension. The partners who were running the business of the partnership firm under the licensing. The members who were running the business of the partnership firm under the licence have not been given any opportunity to state their case before the licensing authority before the order of cancellation of licence is passed. He also further pointed out that Clause - 12 of the Control Order, 1981 requires that no order shall be made under this Clause unless and until a person who is likely to be affected has been given reasonable opportunity of stating his case. The persons and partners of the partnership firm who were running the firm have not been given any opportunity of representing their case before the licensing authority.

5. The licensing authority has issued the notice to a person who has already retired from the petitioner partnership firm and he was no more as a partner of that firm. Without giving reasonable opportunity of stating his case and in violation of the statutory provisions of law and against the principle of natural justice the impugned order is passed and hence the impugned order is illegal and null & void.

6. The affidavit-in-reply has been filed on behalf of the respondents wherein it has been stated that the licence holder was informed by the authority concerned to enter his name but he has stated that he has no right or share in the petitioner - partnership firm. As such, the condition regarding opportunity of stating his case has not been availed. The persons who were running the partnership firm under the licence had no locus standi for making any representation before the licensing authority. Hence, there was no need for the authority concerned to issue any notice to any other person or partner of the firm. The person in whose name the original license was issued was given reasonable opportunity of stating his case before the authority concerned. The representation was filed to enter the name of Shri Jagdishchandra Unnadkat and Shri Prakashkuamr Raja and decision was taken not to delete the name of Maganlal Odhavji which has resulted into transfer of licence. Hence the proposal was sent to the Government to file a review application and in response to the said proposal, the Government has rejected both the proposal; (i) to insert the name of Hiten D. Kanabar and (ii) to delete the name of Maganlal Odhavji and

initiated the proceeding to continue the name of Maganlal Odhavji in the said licence. As such, the question does not arise to give any opportunity of stating his case to Hiten D. Kanabar as a partner of the firm. Though Maganlal Odhavji was informed as to whether he was selling to keep his name continue in the said licence or not. He declared that he has no any right or share in the partnership firm and thus he was given opportunity of hearing. Thus, insertion or deletion of the name from the licence amounts to transfer of licence and that is prohibited by Clause 4 (3) of the Control Order, 1981.

7. The contention of the learned A.G.P. is that the reasonable opportunity of stating his case was given to the original licence holder and there was no need for the licencing authority to give any opportunity of stating his case to any person except the original licence holder. She further contended that the order passed by the licensing authority is legal and sustainable in the eye of law and no interference of this Court is required in that order as Hiten D. Kanabar is not authorized holder and hence no notice is required to be given or any opportunity of representing his case before the authority concerned is required to be given.

8. I have carefully considered the contentions of the learned counsel for the parties and perused the relevant papers on record. It appears from the record that reasonable opportunity of representing his case before the licensing authority or opportunity of being heard is required under clause 8 and 12 of the Control Order, 1981 has not been given to the person concerned who was running business of the firm under the licence. He may be unauthorised person who is running the business of the firm. But prima facie he is affected person/party or is likely to be affected by the impugned order. The person who is running the business of the firm of the petitioner is required to be given a notice. Admittedly, no notice has been given to Hiten D. Kanabar to represent his case nor any opportunity of being heard was given to him. Without giving reasonable opportunity of his case before the licensing authority, the impugned order should not have been passed for cancellation or suspension of the licence. Shri Hiten D. Kanabar is the authorized licence holder under the authority of the licensing authority. He was running business of the firm and he is likely to be affected by the impugned order, the notice was required to be given to him under the provisions of Clauses 8 and 12 of the Control Order 1981. Admittedly, neither any notice was given by the licensing authority to the petitioner nor the State Government

before rejecting the proposal of the licensing authority nor before directing the licensing authority to cancel the licence was given to him as required under Clause 12 of the Control Order, 1981. As such, the impugned order is not sustainable in the eye of law on the face of the record which is violative of the statutory provisions of Clause 12 of the Control Order, 1981 and against the principles of natural justice which requires to give an opportunity of hearing to a party which is likely to be affected by any order. As such, the impugned order is illegal, contrary to law and against the principles of natural justice and is not sustainable in the eye of law and hence the same liable to be quashed and set aside.

9. Accordingly, this petition is allowed and the impugned order dated 29-7-2000 passed by the licensing authority is hereby quashed and set aside and the respondent no. 2 - Licensing Authority & District Supply Officer, Junagadh would be at liberty to take any action against Hiten D. Kanabar in accordance with law after giving him an opportunity of representing his case. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/